

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Isabel Cifarelli	Team: Squad #2	CCRB Case #: 202203878	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/20/2021 7:21 PM	Location of Incident: Canal Street and Forsyth Street	Precinct: 05	18 Mo. SOL 4/20/2023	EO SOL 4/20/2023	
Date/Time CV Reported Tue, 06/14/2022 10:21 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 06/14/2022 10:21 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Frank Faber	16418	957570	005 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Brian Coughlin	20321	958442	005 PCT

Officer(s)	Allegation	Investigator Recommendation
A. PO Frank Faber	Discourtesy: Police Officer Frank Faber acted discourteously toward § 87(2)(b)	
B. PO Frank Faber	Off. Language: Police Officer Frank Faber made offensive remarks to § 87(2)(b) based upon immigration status.	

Case Summary

On June 14, 2022, § 87(2)(b) filed this complaint via the CCRB's website. The case was initially assigned to Investigator Ariel Deutsch. It was reassigned to Supervising Investigator MacDonald Muir on August 25, 2022, and then to Investigator Isabel Cifarelli on October 12, 2022.

On October 20, 2021, at approximately 7:21 p.m., § 87(2)(b) was on a Citi bike on the eastbound side of a two-way bike lane at the intersection of Canal Street and Forsyth Street in Manhattan when he was stopped by Police Officer Frank Faber and Police Officer Brian Coughlin of the 5th Precinct. § 87(2)(b) who spoke with an accent and described himself as a “foreigner,” stood near the officers’ patrol car while they wrote him a summons; during which time the Police Officer Faber began to play the song “God Bless America” by Lee Greenwood loudly over the car’s speakers (**Allegation A: Discourtesy – Action,** § 87(2)(g) **Allegation B: Offensive Language – Other,** § 87(2)(g) § 87(2)(b) was released with a Traffic Violations Bureau summons for disobeying a traffic device while operating a bicycle (**BR 01**).

The investigation received four body-worn camera (BWC) videos related to this incident, recorded by Police Officer Faber and Police Officer Coughlin. The videos are located in IAs 66-69 (**BR 03-06**) and are summarized in IA 70 (**BR 07**). The investigation also obtained cell phone video from § 87(2)(b) located in IAs 17-24 (**BR 08-15**) and summarized in IA 26 (**BR 16**).

Findings and Recommendations

Allegation (A) Discourtesy: Police Officer Frank Faber acted discourteously toward § 87(2)(b).

Allegation (B) Offensive Language: Police Officer Frank Faber made offensive remarks to § 87(2)(b) based upon immigration status.

§ 87(2)(b) was interviewed by the CCRB on June 23, 2022 (**BR 17**). Police Officer Coughlin was interviewed on August 11, 2022 (**BR 18**) and Police Officer Faber was interviewed on August 18, 2022 (**BR 19**).

§ 87(2)(b) testified that he was on his bike when he saw Police Officer Faber and Police Officer Coughlin issuing a summons to a bicyclist. He shouted, “Stop harassing bikers,” before moving onto the left side of the bike lane to pass slower bikers. Police Officer Faber saw this and stopped § 87(2)(b). Police Officer Faber explained that he was stopping him for riding on the wrong side of the bike lane and asked for his identification. § 87(2)(b) gave Police Officer Faber his identification. The officers returned to their vehicle and § 87(2)(b) made a phone call from the sidewalk approximately two feet away from the passenger side of the patrol car, during which he stated that he was a “foreigner” and that this type of thing did not happen in his country. No music was playing from inside the vehicle at that time. § 87(2)(b) believed Police Officer Faber or Police Officer Coughlin knew he was a “foreigner” because of his accent and because of his proximity to their car during his phone call. Approximately five minutes later, he heard the song, “God Bless America,” from inside the vehicle and observed Police Officer Faber and Police Officer Coughlin laughing. He did not see Police Officer Faber or Police Officer Coughlin turn on the music; however, after he recognized the song from the chorus, he looked into the vehicle and saw an officer on Spotify. Approximately 30 seconds into the song, the music became louder. At that point, he began recording this incident, and both officers stopped laughing once they saw he was recording. While recording, § 87(2)(b) said something to the effect of, “Look at this. They’re intentionally playing ‘God Bless America,’ and they’re laughing at me.” Neither officer responded or made any comments or remarks while the song played. The song was played in its entirety, which lasted approximately two minutes. The officers exited their vehicle, handed him his identification and a summons, and walked away.

Police Officer Coughlin's first BWC video (**BR 05**), beginning at 00:57 into the video, shows Police Officer Coughlin and Police Officer Faber stopping an unidentified white male civilian who has an audible non-American accent. The officers ask for his identification, he provides it, and after a short back-and-forth about the reason for the stop, the officers return to their vehicle to issue him a summons.

Police Officer Faber's first BWC video (**BR 04**) beginning at 02:35 into the video shows the officers sitting in their vehicle after speaking to this unidentified civilian. At the 03:14 mark, Police Officer Faber states, "'This is fucking bullshit,' 'I'm in a hurry,' what else did my gentleman say?'" Police Officer Coughlin asks, "Is he Aussie or is he a Brit?" Police Officer Faber states that he thinks the man is a "Brit," and Police Officer Coughlin agrees. At the 07:06 mark, while speaking about the man, one of the officers makes a trumpet sound and states, "O hear he, O hear he," in an exaggerated voice and unclear accent. § 87(2)(b)

§ 87(2)(b). Police Officer Faber then begins to speak in a faux-British accent about officers in the "bicycle unit." At the 09:24 mark, Police Officer Faber states, "[inaudible]'s watching you?" Police Officer Coughlin replies in an exaggerated accent, "Oh ho, I think you are asshole." Both officers laugh and Police Officer Coughlin continues speaking in the accent, stating, "You are asshole cop." Given the location of the unidentified male when the officers return to give him the summons, he was not within earshot as the officers made these statements.

Beginning at 16:38 into Police Officer Faber's first BWC video (**BR 04**), § 87(2)(b) who is not yet in frame, is heard stating, "This is New York City. Are you harassing bikers, now?" Police Officer Faber stops him and they have a short conversation during which Police Officer Faber states that he stopped § 87(2)(b) for crossing the solid yellow line, and § 87(2)(b) argues that there were several other people also committing violations who were not stopped. § 87(2)(b) speaks with a non-American accent. At the 23:20 mark, Police Officer Faber and Police Officer Coughlin return to their vehicle.

Beginning at 28:55 into Police Officer Coughlin's first BWC video (**BR 05**), Police Officer Coughlin places his BWC onto the front passenger window, facing outward. § 87(2)(b) is standing on the sidewalk, a few feet from the car. He is on the phone and explains what happened with the officers, stating that sometimes officers do not include their shield numbers on summonses, and Police Officer Faber responds, "You want to take my badge number down now?" At the 32:02 mark, § 87(2)(b) still on the phone, states, "It's sad, in my country they will never do this. This is insane, this is why—this is so crazy. They will never just fine you because they don't want you to complain." He then states, "I'm only doing this because I'm white. If I were black, I wouldn't do it. They would kill me. That's what they do." Police Officer Coughlin laughs, and Police Officer Faber is heard saying something, though it is not clear what.

In Police Officer Faber's first BWC video (**BR 04**), at 28:00 into the video, after § 87(2)(b) states, "It's sad, in my country they will never do this. This is insane, this is why—this is so crazy. They will never just fine you because they don't want you to complain," and, "I'm only doing this because I'm white. If I were black, I wouldn't do it. They would kill me. That's what they do," Police Officer Faber laughs and says, "Oh, we're gonna get into that, right?" Police Officer Coughlin states, "Yeah, we would just kill him, he said, if he was black." There is music playing quietly in the background. § 87(2)(b) can be heard still speaking on the phone, but his statements are not clear. At 29:13, the song that is playing ends and a new song begins immediately after. At 29:24, the music stops altogether. At the 29:38 mark, § 87(2)(b) is heard stating, "They're choosing their Spotify songs." Police Officer Coughlin states, "Yep," and a new song begins at a very low volume. It is not clear at this point what song is playing. Police Officer Faber and Police Officer Coughlin briefly discuss a recent football game. At the 30:02 mark, the music becomes much louder and it becomes clear that the

song playing is, “God Bless America” by Lee Greenwood. The song reaches the chorus immediately after the volume increases, the lyrics stating, “...and they can’t take that away. And I’m proud to be an American, where at least I know I’m free, and I won’t forget the men who died who gave that right to me, and I gladly stand up next you and defend her still today, ‘cause there ain’t no doubt I love this land, God bless the USA.” At the 30:11 mark, § 87(2)(b) is heard stating, “This is so sad,” and the volume increases further. The song plays out in full, ending at the 32:31 mark. Police Officer Faber intermittently sings along quietly. At the 35:57 mark, § 87(2)(b) is audible stating, “Now they’re playing country music.” Police Officer Coughlin states in a low voice, “We’re playing country music, he said.” Police Officer Faber states, “What’s wrong with that?” Police Officer Coughlin states, “I don’t know, apparently something.” Police Officer Faber states, “I’m not allowed to play country music? Because I don’t want to hear your voice anymore? Because you’re annoying me?” The beginning of the “Battle Hymn of the Republic” is heard from the car’s speakers. Police Officer Faber states, “Now I’m playing religious music. Problem with that?”

Cell phone footage taken by § 87(2)(b) during the incident (**BR 10**) shows Police Officer Coughlin scrolling on a cell phone while Police Officer Faber types something into a tablet at the center console. Police Officer Faber has a cell phone balancing on his right thigh, the screen of which appears to display a list in white text on a black background. No music is audible initially. Beginning at 00:07 into the video, Police Officer Faber moves his right hand from the tablet to the cell phone on his lap. He types something, and the items on the list begin to change and auto-populate results. Police Officer Faber scrolls briefly, selects one of the options at the 00:15 mark, and the list is replaced by a large square, apparently an album cover. Police Officer Faber locks the cell phone screen. At the 00:27 mark, § 87(2)(b) states, “...and they’re choosing their Spotify songs,” and Police Officer Coughlin states, “Yep.” Another video taken by § 87(2)(b) shortly thereafter (**BR 11**) shows Police Officer Coughlin and Police Officer Faber still sitting in their car. The chorus of “God Bless America” by Lee Greenwood is heard playing on the car’s speakers. At 00:05 into the video, Police Officer Faber looks up at § 87(2)(b) then looks back down at his tablet and smiles.

Police Officer Coughlin’s first BWC video (**BR 05**), beginning at 44:30 into the video, shows that after Police Officer Faber returns § 87(2)(b)’s identification and explains the summons, § 87(2)(b) states, “It’s really sad, I’m sorry.” Police Officer Coughlin states, “Is it, though?” § 87(2)(b) states, “That you know I’m foreigner, and to show that you’re white American, you just play ‘God Bless America’?” Police Officer Coughlin states, “What are you talking about?” § 87(2)(b) states that Police Officer Coughlin’s and Police Officer Faber’s last names are “Irish” and “Latino ... or Italian” and they are “not even Americans.” Police Officer Faber states, “My last name’s not Italian, are you assuming my last name’s a certain race, sir?” § 87(2)(b) walks away, and Police Officer Coughlin yells, “How would we know you’re not even from here?” § 87(2)(b) states that he was saying it on the phone. Police Officer Coughlin walks toward § 87(2)(b) and states, “No, what’d you say? I didn’t hear you. How would we even know where you’re from and why would that even matter?” § 87(2)(b) reiterates his complaint that they played “God Bless America” after he stated that he was a “foreigner,” and Police Officer Faber repeatedly tells § 87(2)(b) to not assume what his last name means. § 87(2)(b) states that Police Officer Faber chose the song on Spotify while he was there and laughed. § 87(2)(b) leaves on his bicycle.

Police Officer Faber provided testimony consistent with the BWC footage up until the officers returned to their patrol car. Police Officer Faber did not recall § 87(2)(b) making any statements about his personal background or that he was from another country, and he did not at any point get the impression that § 87(2)(b) was not from the United States. He assumed § 87(2)(b) was American because he was speaking about his right to freedom of speech. In his CCRB interview, Police Officer Faber was asked whether § 87(2)(b)

§ 87(2)(b) spoke with an accent, and he replied, “I didn’t think it was an accent. ... just his normal, that’s how he normally speaks.” When Police Officer Faber began writing a summons on his department-issued tablet, he felt that § 87(2)(b) was attempting to “bait” the officers into “saying something stupid” by saying that if he had been Black, the officers would have killed him. The car speaker was connected to Police Officer Faber’s phone, but he did not recall what if any music played. He did not recall what application he was using to play music, though he generally uses YouTube for music and chooses a station based on genre. Police Officer Faber changed the music station and turned the volume up to “drown § 87(2)(b) out,” because he did not want either himself or Police Officer Coughlin to “get baited into saying something stupid” in response to § 87(2)(b). Police Officer Faber did not recall § 87(2)(b) ever making any complaints about the music, but he was intentionally tuning him out. After several minutes, the officers exited their vehicle and Police Officer Faber handed § 87(2)(b) his summons. § 87(2)(b) then brought up the topic of nationality, stating that Police Officer Faber’s name was Spanish or Italian, and Police Officer Faber responded by saying something like, “You just assumed what I am.” When presented a portion of Police Officer Coughlin’s BWC footage which captures the music being played, Police Officer Faber recognized this song as “God Bless America.” He did not pick this specific song but rather picked a Country music station. He stated that when you choose a station, it begins playing a song from within a pre-set playlist and shows you what that song is. The song can be skipped. No music had been on before “God Bless America” played. When presented the cell phone footage which shows Police Officer Faber selecting something on his phone, he stated that he was not sure what he was doing but that he believed that he may have been running § 87(2)(b)’s information in the NYSPIN application. Police Officer Faber was informed that it was alleged that he had intentionally played “God Bless America” in order to demean § 87(2)(b) because he was from another country, and he stated, “I mean, that allegation, I don’t look at anybody that I come across with as ‘not American,’ you know? I mean, that would be kind of judgmental on his part to be quite honest, and stereotypical.” Police Officer Faber was asked to clarify what he meant, and he stated, “Well, I mean, for him to say, ‘Hey, I wasn’t born here, you know, and he’s playing music, uh, God Bless the USA, in America’ that I’m being offensive toward him, when I don’t look at him as not American. You know, I look at everybody off the bat as American when I stop them, as a citizen, I mean, what is he getting at with that?” Police Officer Faber was informed that it was alleged that this action was offensive, Police Officer Faber stated, “I mean, you could find, there’s plenty of songs that I find offensive, you know? When you’re talking about killing people on the radio, shaking your ass, I find that offensive, but, I mean, I don’t go to other people’s workplace and make a complaint about them for that.” Police Officer Faber testified that although he personally did not hear § 87(2)(b) saying that he was not from the United States, he would not find it offensive to play the song to non-citizens because, “He ... is here in this country, I don’t assume that he’s not from this country, you can be born wherever you want, if you’re here in this country there’s a reason you’re here in this country, I treat everybody the same, like you’re an American citizen.”

Police Officer Coughlin did not recall the circumstances surrounding this particular song being played and his memory was not refreshed when presented video footage.

NYPD Patrol Guide Procedure 200-02 states that the NYPD is committed to treating citizens with compassion, courtesy, professionalism, and respect. Officers are expected to render services with courtesy and civility (**BR 20**).

NYPD Administrative Guide Procedure 304-06 states that officers must not use discourteous or disrespectful remarks regarding another person’s ethnicity, race, or religion (**BR 22**).

Per DAO-DCT Case Number 2015-15012, discourteous language may be permissible when an officer is speaking in the context of a dynamic situation over which he is still attempting to gain control. However, discourteous statements are prohibited when they serve no legitimate purpose but

to belittle the civilian (**BR 21**).

It is undisputed that Police Officer Faber caused the song to be played over the car's speakers and intentionally turned the volume up to drown out the sound of § 87(2)(b) speaking. Police Officer Faber testified that he did this to avoid getting "baited" into "saying something stupid" in response to § 87(2)(b)'s comments about race, and that he did not intentionally choose this song. § 87(2)(g)

Cell phone footage taken by § 87(2)(b) when compared to the officers' BWC footage shows that at the moment the music changed, Police Officer Faber typed something into his phone and selected something from a list, causing an album cover to appear, indicating that he had the opportunity to see what song was playing before he turned the volume up.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 23**).
- Police Officer Faber has been a member of service for seven years and has been a subject in seven other CCRB complaints and nine other allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of June 28, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident (**BR 24**).
- § 87(2)(b); §§ 86(1)(3)(4); § 87(2)(c)
- § 87(2)(b)

Squad: 2

Investigator:	<u>Isabel Cifarelli</u>	<u>Inv. Isabel Cifarelli</u>	<u>2/2/2023</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Alexander Opoku-Agyemang</u>	<u>IM Opoku-Agyemang</u>	<u>2/2/2023</u>
	Signature	Print Title & Name	Date